

## SECTION V

### FINANCIAL PROVISIONS

5.1 The Project will consist of both shared and non-shared costs. Shared costs are addressed in paragraph 5.2. Non-shared costs are addressed in paragraphs 5.3 and 5.4. The U.S. dollar will be the reference currency for the Project, and the Project fiscal year will be the U.S. fiscal year.

5.2 Each Participant will contribute its equitable share of the total shared costs of the Project, including administrative costs, costs of claims, production support, production engineering, production changes, other production related costs, and field activity support costs, and will receive an equitable share of the results of the Project as described in this MOU. The total shared costs will not exceed a Cost Ceiling of \$346.34 Million (then year dollars). The Participants' Cost Ceilings are as follows:

U.S. Participant - \$286.30M

GE Participant - \$29.27M

NL Participant - \$30.77M

Total - \$346.34M

Each Participant will contribute its share according to Table A-2 of Annex A (Project Plan). The Cost Ceilings may only be changed by amendment to this MOU in accordance with Section XIX (Amendment, Withdrawal, Termination, Entry into Force, and Duration).

5.2.1 The shared costs will be shared proportionately based on projected total missile orders. This sharing is reflected in the following formula:  
$$S(SM) = (A/B)C.$$

5.2.1.1 "S(SM)" represents the shared costs to be borne by a Participant.

5.2.1.2 "A" represents the SM all-up-round (AUR) order quantities plus 0.5 times the SM mod kit quantities for that Participant. The values for "A" are set forth in Annex A (Project Plan) Table A-1.

5.2.1.3 "B" represents the sum of the individual "A" values of the Participants.

5.2.1.4 "C" represents the shared costs of the effort.

5.2.2 As necessary, each Participant will provide, through its SMCC member, adjustments to their order quantities for all subsequent years. If any Participant's AUR order quantity plus 0.5 times the mod kit order quantity ("A" value) increases or decreases by more than 10% from the original Annex A, the Participant's cost shares in subsequent years will be adjusted by the SMCC in accordance with Section IV (Management (Organization and Responsibility)) paragraph 4.3.5.

5.3 Those costs associated with production and related items and services, including spares intended solely and exclusively for use by a Participant, will be paid by that Participant.

5.4 The following costs will be borne entirely by the Participant incurring the costs or on whose behalf the costs are incurred:

5.4.1 Costs associated with national representation at meetings.

5.4.2 Costs associated with any unique national requirements identified by a Participant including costs for Special Tooling and Test Equipment, beyond those described in paragraph 5.3.

5.4.3 Costs incurred by the U.S. Navy Integrated Warfare Systems, Surface Ship Weapons Directorate or its successor to make alternative arrangements when a Participant is unable to provide at least one person to the IPS.

5.4.4 Costs for CPP and their travel costs.

5.5 The SM PM will be responsible for establishing the detailed Financial Management and Procedures Document (FMPD) under which the Project will operate. These procedures, which must accord with national accounting and audit requirements of the Participants, will be prepared by the U.S. Navy Integrated Warfare Systems, Surface Ship Weapons Directorate or its successor and will be subject to the review and approval of the SMCC. Where national auditors (for the German Participant the Bundesrechnungshof or its successor) need to obtain specific data or inspect records to be able to fulfill their national obligations, the SM PM will facilitate access to such information.

5.6 A Participant will promptly notify the other Participants if available funds are not adequate to fulfill its responsibilities under this MOU. If a Participant notifies the other Participants that it is terminating or reducing its funding for this Project, the Participants will immediately consult with a view toward continuation on a modified basis.

5.7 The cost of GE Participant and NL Participant CPP in the IPS of the U.S. Navy Integrated Warfare Systems, Surface Ship Weapons Directorate or its successor will be borne as follows by the Parent Participant:

5.7.1 All pay and allowances.

5.7.2 Transportation of the CPP and their personal property to the place of assignment in the Host Participant's nation prior to the CPP's commencement of a tour of duty in the International Project Section of the U.S. Navy Integrated Warfare Systems, Surface Ship Weapons Directorate or its successor, and return transportation of the foregoing to the place of assignment in the Host Participant's nation upon completion or termination of the tour of duty. The foregoing will apply to the CPP's dependents and their personal property to the extent permitted under the laws and regulations of the government of the Parent Participant.

5.7.3 Compensation for the loss of, or damage to, the personal property of the CPP or the CPP's dependents, subject to the laws and regulations of the government of the Parent Participant.

5.7.4 Preparation and shipment of remains and funeral expenses in the event of the death of the CPP or the CPP's dependents, subject to the laws and regulations of the government of the Parent Participant.

5.8 The Participants recognize that it may become necessary for one Participant to incur contractual or other obligations for the benefit of other Participants prior to receipt of other Participant's funds under this MOU. In the event that a Participant incurs such obligations, those Participants will pay their equitable share of such obligations, make funds available in such amounts and at such times as may be required by the obligations, or pay any damages and costs that may accrue from the performance or cancellation of the obligations in advance of the time such payments, damages, or costs are due.

## SECTION VI

### CONTRACTING PROVISIONS

6.1 The U.S. Participant (acting through the Department of the Navy) will be responsible for Contracting for this MOU in accordance with U.S. Contracting laws, regulations and procedures. The Contracting Officer is the exclusive source for providing contractual direction and instructions to Contractors.

6.2 The SM PM will be responsible for the coordination of activities relating to the Project, and will cooperate with the Contracting Officer in the areas of Contract procedures, Contract negotiation, evaluation of offers, and Contract award. The IPS will review relevant contract provisions and statements of work prior to the development of solicitations and contract award to ensure that they are in accordance with this MOU. In addition, the Contracting Officer will keep the SM PM advised of all financial arrangements with the prime Contractor. The SM PM via the IPS will keep all MOU Participants advised of the Contracting process status and any options available during the Contracting process.

6.3 Participants will provide their production requirements prior to the Contracting process. Based on information made available during the Contracting process, Participants will confirm final production requirements prior to Contract award. The Participants expect that the Contract(s) that the Contracting Officer will award for the SM-2 missile production requirements will be fixed price Contracts or a variation thereof.

6.4 The Contracting Officer will negotiate to obtain the rights to use and disclose Project Information required by Section IX (Disclosure and Use of Project Information). The Contracting Officer will insert into prospective Contracts (and require its Contractors to insert in subcontracts) suitable provisions to satisfy the requirements of this MOU, including Section IX (Disclosure and Use of Project Information), Section X (Controlled Unclassified Information), Section XII (Security), Section XIII (Third Party Sales and Transfers), and Section XIX (Amendment, Termination, Entry into Effect, and Duration) including suitable provisions to ensure compliance with the Participants' export control laws and regulations. During the Contracting process, the Contracting Officer will advise prospective Contractors of their responsibility to immediately notify the Contracting Agency, before Contract award, if they are subject to any license or agreement that will restrict their freedom to disclose information or permit its use. The Contracting Officer will also advise prospective Contractors to

employ their best efforts not to enter into any new agreement or arrangement that will result in restrictions.

6.5 In the event the Contracting Officer is unable to secure adequate rights to use and disclose Project Information as required by Section IX (Disclosure and Use of Project Information), or is notified by Contractors or potential Contractors of any restrictions on the disclosure and use of information, the matter will be referred to the SMCC for resolution.

6.6 The transfer of export-controlled information furnished by one Participant will be authorized by the government of the furnishing Participant only to those Contractors of the other Participant who will limit the end use of the information received for the sole purpose of furthering the purposes authorized under this MOU. The Participants will establish legal arrangements with their Contractors to ensure that their Contractors do not retransfer or otherwise use export controlled information for any purpose other than the purposes authorized under this MOU. Such legal arrangements will also provide that the Contractor will not retransfer the export-controlled information to another Contractor without the consent of the government of the furnishing Participant.

6.7 The Contracting Officer will immediately advise the SM PM of any cost growth, schedule change, or performance problems of any Contractor for which the Contracting Officer is responsible.

6.8 Upon request of the Contracting Agency, the Participants will provide quality assurance, inspection/acceptance, and Contract audit services in connection with the placement and administration of Contracts and subcontracts in their nations. These services will be provided by each Participant through normal Government administrative agencies.

6.9 Consistent with Section II (Objective) a Participant may contract for their unique national requirements and, upon agreement, for the unique national requirements of other Participants.

## SECTION VII

### WORK SHARING

7.1 The Participants will work toward the goal that the work to be performed under this MOU will be shared in proportion to the cost contribution of the Participants to the maximum extent practicable, consistent with high technical merit, reasonable cost, and the need to achieve the timely, economical, and efficient execution of the Project. This work will encompass those requirements contained in Section III (Scope of Work) of this MOU that are common to the Participants and are funded under this Project.

7.2 In the event of a competition, Contractor sources from all Participants will be permitted to bid on Project work. Each Participant will encourage its Contractors to provide competitive opportunities to sources from the other Participants to participate in the work of the Project, provided that such participation does not adversely impact the Project.

7.3 No requirement will be imposed by any Participant for work sharing or other industrial or commercial compensation in connection with this MOU that is not in accordance with this MOU.

## SECTION VIII

### PROJECT EQUIPMENT

8.1 Each Participant may provide Project Equipment identified as being necessary for implementing the MOU to another Participant. Project Equipment will remain the property of the providing Participant. A list of all Project Equipment provided, including replacement value computed pursuant to the providing Participant's national laws and regulations, by one Participant to another Participant will be developed and maintained by the IPS and approved by the SMCC.

8.2 The receiving Participant will maintain any such Project Equipment in good order, repair, and operable condition. Unless the providing Participant has authorized the Project Equipment to be expended or otherwise consumed without reimbursement to the providing Participant, the receiving Participant will return the Project Equipment to the providing Participant in as good condition as received, normal wear and tear excepted, or return the Project Equipment and pay the cost to restore it. If the Project Equipment is damaged beyond economical repair, the receiving Participant will return the Project Equipment to the providing Participant (unless otherwise specified in writing by the providing Participant) and pay its replacement value as specified in the list mentioned in Paragraph 8.1. If the Project Equipment is lost or stolen while in the custody of the receiving Participant, the receiving Participant will issue a certificate of loss to the providing Participant and pay the replacement value as specified in the list mentioned in Paragraph 8.1.

8.3 The providing Participant will deliver Project Equipment to the receiving Participant at a mutually determined location. Possession of the Project Equipment will pass from the providing Participant to the receiving Participant at the time of receipt of the Project Equipment. Any further transportation is the responsibility of the receiving Participant.

8.4 All Project Equipment that is transferred will be used by the receiving Participant only for the purposes of carrying out this MOU, unless otherwise consented to in writing by the providing Participant. In addition, in accordance with Section XIII (Third Party Sales and Transfers), Project Equipment will not be re-transferred to a Third Party without the prior written consent of the providing Participant.

8.5 Project Equipment transferred to one Participant under this MOU will be returned to the providing Participant prior to

the withdrawal of either Participant or termination or expiration of this MOU.

8.6 Any Project Equipment which is jointly acquired on behalf of the Participants for use under this MOU will be disposed of during this Project or when the Project ceases, as agreed by the SMCC.

8.7 Disposal of jointly acquired equipment may include a transfer of the interest of one Participant in such Project Equipment to one of the other Participants, or the sale of such equipment to a Third Party in accordance with Section XIII (Third Party Sales and Transfers) of this MOU. The Participants will share the consideration from jointly acquired Project Equipment transferred or sold to a Third Party in the same ratio as the shared costs under this MOU.



## SECTION IX

### DISCLOSURE AND USE OF PROJECT INFORMATION

9.1 The Participants recognize that successful collaboration depends on full and prompt exchange of information necessary for carrying out this Project. The Participants intend to acquire sufficient Project Information and rights to use such information to enable the production of SM-2. The nature and amount of Project Information to be acquired will be consistent with the objectives stated in Section II (Objective), Section III (Scope of Work), and Section VI (Contracting Provisions). Transfer of such information to Contractors will be consistent with each Participant's applicable export control laws and export control regulations.

#### 9.2 Government Project Foreground Information

9.2.1 Disclosure: Project Foreground Information generated by a Participant's military personnel or civilian employees will be disclosed without charge to the other Participants.

9.2.2 Use: Each Participant may use all Government Project Foreground Information without charge for Defense Purposes. The Participant generating Government Project Foreground Information will also retain its rights of use thereto. Any sale or other transfer to a Third Party, will be subject to the provisions of Section XIII (Third Party Sales and Transfers) of this MOU.

#### 9.3 Government Project Background Information

9.3.1 Disclosure: Each Participant, upon request, will disclose to the other Participants any relevant Government Project Background Information generated by its military personnel or civilian employees, provided that:

9.3.1.1 such Project Background Information is necessary to or useful in the Project, with the Participant in possession of the information determining whether it is "necessary to" or "useful in" the Project;

9.3.1.2 such Project Background Information may be made available without incurring liability to holders of proprietary rights;

9.3.1.3 disclosure is consistent with national disclosure policies and regulations of the furnishing Participant; and

9.3.1.4 any disclosure or transfer of such Government Project Background Information to Contractors is consistent with the furnishing Participant's export control laws and export control regulations.

9.3.2 Use: Government Project Background Information disclosed by one Participant to the other Participants may be used without charge by the other Participants for Project Purposes only; however, the furnishing Participant will retain all its rights with respect to such Project Background Information. Where the use of Government Project Background Information is necessary to enable the use of Project Foreground Information, such Government Project Background Information may be used for Defense Purposes.

#### 9.4 Contractor Project Foreground Information

9.4.1 Disclosure: Project Foreground Information generated and delivered by Contractors, will be disclosed without charge to the Participants.

9.4.2 Use: Each Participant may use without charge for its Defense Purposes all Contractor Project Foreground Information generated and delivered by Contractors of the other Participants. The Participant whose Contractors generate and deliver Contractor Project Foreground Information will also retain rights of use thereto in accordance with the applicable Contract(s). Any sale or other transfer to a Third Party of Contractor Project Foreground Information, will be subject to the provisions of Section XIII (Third Party Sales and Transfers) of this MOU.

#### 9.5 Contractor Project Background Information

9.5.1 Disclosure: Any Project Background Information, (including information subject to proprietary rights) generated and delivered by Contractors will be made available to the other Participants provided the following provisions are met:

- 9.5.1.1 such Project Background Information is necessary to or useful in the Project, with the Participant in possession of the information determining whether it is "necessary to" or "useful in" the Project;
  - 9.5.1.2 such Project Background Information may be made available without incurring liability to holders of proprietary rights;
  - 9.5.1.3 disclosure is consistent with national disclosure policies and regulations of the furnishing Participant; and
  - 9.5.1.4 any disclosure or transfer of such Contractor Project Background Information to Contractors is consistent with the furnishing Participant's export control laws and export control regulations.
- 9.5.2 Use: Project Background Information furnished by one Participant's Contractors and disclosed to the other Participants may be used without charge by the other Participants for Project Purposes only, and may be subject to further restrictions by holders of proprietary rights; however, the furnishing Participant will retain all its rights with respect to such Project Background Information. Where the use of Contractor Project Background Information is necessary to enable the use of Project Foreground Information, such Contractor Project Background may be used for Defense Purposes in accordance with such fair and reasonable terms as are arranged with the Contractor.

## 9.6 Alternative Uses of Project Information

- 9.6.1 Any Project Background Information provided by one Participant will be used by the other Participants only for the purposes set forth in this MOU, unless otherwise consented to in writing by the providing Participant.

## 9.7 Proprietary Project Information

- 9.7.1 All Project Information subject to proprietary interests will be identified and marked, and it will be handled as Controlled Unclassified Information.

9.7.2 The provisions of the NATO Agreement on the Communication of Technical Information for Defense Purposes, done at Brussels on 19 October 1970, and the Implementing Procedures for the NATO Agreement on the Communication of Technical Information for Defense Purposes, approved by the North Atlantic Council on 1 January 1971, will apply to proprietary Project Information related to this MOU.

## 9.8 Patents

- 9.8.1 Where a Participant owns title to a Project Invention, or has the right to receive title to a Project Invention, that Participant will consult with the other Participants regarding the filing of a Patent application for such Project Invention. The Participant which has or receives title to such Project Invention will, in other countries, file, cause to be filed, or provide the other Participants with the opportunity to file, on behalf of the Participant holding title, or its Contractors, as appropriate, Patent applications covering that Project Invention. If a Participant having filed or caused to be filed a Patent application decides to stop prosecution of the application, that Participant will notify the other Participants of that decision and permit the other Participants to continue the prosecution.
- 9.8.2 The other Participants will be furnished with copies of Patent applications filed and Patents granted with regard to Project Inventions.
- 9.8.3 The other Participants will acquire a non-exclusive, irrevocable, royalty-free license to practice or have practiced, by or on behalf of the Participant, throughout the world for Defense Purposes, any Project Invention.
- 9.8.4 Patent applications to be filed under this MOU which contain Classified Information, will be protected and safeguarded in accordance with the requirements contained in the NATO Agreement for the Mutual Safeguarding of Secrecy of Inventions Relating to Defense and for Which Applications for Patents Have Been Made, done in Paris on 21 September 1960, and its Implementing Procedures.

9.8.5 Each Participant will notify the other Participants of any Patent infringement claims made in its territory arising in the course of work performed under the Project. Insofar as possible, the other Participants will provide information available to it that may assist in defending the claim. Each Participant will be responsible for handling all Patent infringement claims made in its territory, and will consult with the other Participants during the handling, and prior to any settlement, of such claims. The Participants will share the costs of resolving Patent infringement claims in the same percentage as they share the shared costs of the Project or consent to alternative language. The Participants will, in accordance with their national laws and practices, give their authorization and consent for all use and manufacture in the course of work performed under the Project of any invention covered by a Patent issued by their respective countries.